Office - Supreme Court, U.S.
FILED
SEP 15 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2378

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

YACHTS AMERICA, INC., and
THOMAS BRUCE WILSON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY OF PETITIONERS TO RESPONDENT'S BRIEF IN OPPOSITION

STEPHEN RICHARD LEVENTHAL
Counsel of Record
Suite 210
4330 East West Highway
Bethesda, Maryland 20814
(301) 656-3400

Of Counsel:

ROBERT J. ZWEIBEL
Suite 728
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 466-3526

Attorneys for the Petitioners
Yachts America, Inc. and
Thomas Bruce Wilson

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
ARGUMENT	1
CONCLUSION	4

TABLE OF AUTHORITIES

CASES:	Page
Red Lake Band v. *United States*, 607 F. 2d 930	2, 3
Yachts America, Inc. v. *United States*, Civ. No. H-75-1480 (D. Md. Oct. 6, 1976)	1

STATUTE:	
Pub. L. No. 93-444, 88 Stat. 1304	2, 3
Pub. L. No. 94-578, 90 Stat. 2732	3

ARGUMENT

1. The original petition filed herein sets forth Petitioners' argument that the Court of Claims misapplied the doctrine of collateral estoppel.

Respondent's primary argument in its brief in opposition is that the state court Consent Decree terminated Petitioners' rights because of its language and that of the release and assignment executed contemporaneously.

The issue is not the validity of the assignment, but rather the intent of the parties. Respondent fails to note that in the assignment itself the assignor *warranted* to Petitioners that, *from the time of the government taking* on October 15, 1974, a year prior to the assignment, *it had not divested* itself of any interest in the subject property (i.e. proceeds for just compensation). The intent was that Petitioner could and did seek just compensation from the United States. In fact Petitioners originally brought that action in the Federal District Court, which action was dismissed without prejudice so that Petitioners could proceed in the Court of Claims.

The record shows that Petitioners knew Fort Washington Marina, Inc., the assignor, was bankrupt and Petitioners never expected to collect the $300,000 judgment which was for damages on other aspects of the litigation and in fact never did collect *any* of that money.

The Respondent's reference to the "Maryland District Court" on page 7 of their brief in opposition is actually a reference to the Federal District action referred to above. The doctrine of *res judicata* concerning litigation between Petitioner and Fort Washington Marina, Inc. is irrelevant as to the application of the doctrine of collateral estoppel between Petitioners and Respondent. These Doctrines although related are separate and distinct. The

Court of Claims did not rule on the doctrine of *res judicata*.

In any event, the Federal District Court case referred to by Respondent is not binding law and no appeal was required from the Summary Judgment granted Fort Washington Marina, Inc. because that corporation was not an actual Defendant. That case involved two counts, one for just compensation from the United States and the second to declare Pub. L. No. 93-444 unconstitutional. No relief was prayed against Fort Washington Marina, Inc. and none was sought; its being named as a party was merely a mistake in the caption. As no relief was sought against Fort Washington Marina, Inc., no appeal was taken from the order.

2. The Respondent for the first time in its brief in opposition acknowledges the equitable aspect of the doctrine of collateral estoppel which was ignored by the Court of Claims in direct conflict with its ruling in *Red Lake Band* v. *United States*, 607 F.2d 930.

The Respondent does not deny, and never has denied, that it broke its own rules and regulations and violated the mandate of the Constitution and of Pub. L. No. 93-444, both by its actions and inactions with regard to the Petitioners and the subject property.

At the time of the taking, Respondent knew Petitioners were equitable owner, lessee, operator, and option holder of the subject property. Due to the government's action and inaction the following has resulted:

A. Petitioners have not received any compensation whatsoever from any source whatsoever for their interest in the subject property.

B. Petitioners have gone from a flourishing enterprise with over fifty employees to a struggling business,

heavily in debt with only a handful of part-time employees.

C. Petitioner Wilson resided on this property prior to the government taking, still resides there and has no place to go or to take his substantial personal property.

The Respondent suggests that for Petitioners to receive compensation would be a complete windfall. This is clearly incorrect as Petitioners have received nothing and have been greviously injured. The Court of Claims should have acted on this case consistently with *Red Lake Band* v. *United States* (supra).

3. Pub. L. No. 93-444 granted Petitioners as operator an orderly termination of operations of the Marina. Pub. L. No. 94-578 eliminated this right. The Court of Claims ruled that no such right ever existed. The record shows to the contrary and the Petitioners have endured this unfortunate experience through these last nine years. The Court of Claims should not be permitted to "unwrite" clear statutory law. The record clearly shows that Petitioners have never received any orderly termination of operations or just compensaton for the denial thereof.

4. The United States should not be permitted to rely on a questionable technicality and thereby avoid the constitutional mandate of paying just compensation to Petitioners for the taking of their property.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

STEPHEN RICHARD LEVENTHAL
Suite 210
4330 East West Highway
Bethesda, Maryland 20814
(301) 656-3400
Counsel of Record

Of Counsel:
ROBERT J. ZWEIBEL
Suite 728
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 466-3526
Attorneys for the Petitioners